



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,614	03/15/2004	John Larry Sanders	30621-DIV5-CIP1	2613
23589	7590	04/20/2005	EXAMINER	
HOVEY WILLIAMS LLP 2405 GRAND BLVD., SUITE 400 KANSAS CITY, MO 64108			PEZZUTO, HELEN LEE	
			ART UNIT	PAPER NUMBER
			1713	
DATE MAILED: 04/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/708,614

Applicant(s)

SANDERS ET AL.

Examiner

Helen L. Pezzuto

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/4/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claims 1-34 are pending in this application.

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 2/4/05 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because part of the Y-axis on Figs. 1 and 2 appear to be cut off. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 1713

4. Claims 9 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9 and 26 recites "EC" temperature units. What's the scope and meaning of "EC"? The examiner fails to find a clear definition for the recited temperature units in applicants' disclosure. Please clarify.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 14-15, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (US-629).

US 3,265,629 to Jensen et al. discloses a method of coating solid particles, including fertilizers (col. 2, lines 36-42); col. 11, Example 7). Suitable coating employed include aqueous solution of polymers containing both lipophilic and hydrophilic units, with the major

Art Unit: 1713

percentage of the recurring units being hydrophilic (i.e. derived from dicarboxylic acids such as maleic acid and crotonic acid). Thus, water solubility is expected to be substantial as prior art uses a major percentage of hydrophilic monomers, and as further evident in using aqueous solution of the polymer coating. Other copolymerized units such as the instant itaconic acid, are also taught in minor amounts (col. 5, lines 57-72; col. 6, lines 5-12). Hence, the instant substantially water-soluble dicarboxylic acid polymer is suggested. In a preferred embodiment, the reference teaches hydrolyzed styrene-maleic anhydride copolymer containing a minor amount of other comonomer such as itaconic acid, which encompass the instantly recited "at least two different moieties" and the first and second reactants. Prior art further suggest experimental control of the resultant polymer solubility via inclusion of suitable solubilizing agent (col. 6, lines 13-37). Accordingly, since the reference discloses a method of coating fertilizer employing a polymer comprising a major amount of hydrophilic monomers (i.e. maleic acid/anhydride, crotonic acid) and a minor amount of comonomers (i.e. itaconic acid), this teaching makes the selection of at least two dicarboxylic monomers would be

Art Unit: 1713

obvious and readily envisaged by one having ordinary skill in the art, motivated by the reasonable expectation of success in forming a coated fertilizer product as taught.

7. Claims 1-34 are rejected under 35 U.S.C. 103(a) as being obvious over Sanders et al. (US-092).

The applied reference has a common assignee and at least one common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C.

Art Unit: 1713

103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(1)(1) and § 706.02(1)(2).

U.S. 6,515,092 and U.S. 6,518,382 to Sander et al. discloses anionic vinyl/dicarboxylic acid polymers and their utilities, comprising recurring polymeric subunits made up of a combination of at least two different subunit moieties derived from A, B, C moieties. US-092 and US-382 essentially disclose mixing, coating, and co-grounding the instant polymer containing B and C recurring subunits with various fertilizer particle species, with the exception of the extra A moiety. The specific recited steps in producing the instant polymer is disclosed. Since the instant invention does not exclude the presence of additional moieties, it would have been obvious and fully within the purview of one skilled in the art to omit prior art A moiety with the consequent loss of its function.

Double Patenting

8. Claims 1-2, 14, 18-19, and 31-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-23 of U.S. Patent No. 6,518,382. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are generic and encompass those in US-382.

Art Unit: 1713

9. Claims 1-2, 14, 18-19, and 31-32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/846,076. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant method of forming a combination in generic to and encompass the method of coating fertilizer in the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

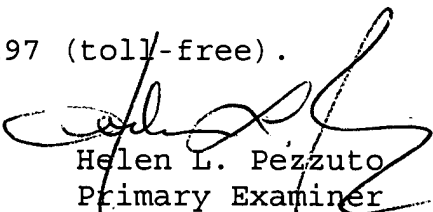
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen L.

Art Unit: 1713

Pezzuto whose telephone number is (571) 272-1108. The examiner can normally be reached on 8 AM to 4 PM, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Helen L. Pezzuto
Primary Examiner
Art Unit 1713

hlp